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13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA

15
 16 MAINE STATE RETIREMENT
 SYSTEM, Individually and On Behalf
 17 of All Others Similarly Situated,

18 Plaintiff,

19 vs.

20 COUNTRYWIDE FINANCIAL
 CORPORATION, a Delaware
 21 corporation; COUNTRYWIDE
 HOME LOANS, INC.; CW ALT
 22 INC., a Delaware corporation;
 CWMBS, INC., a Delaware
 23 corporation; CWABS, INC., a
 Delaware corporation, CWHEQ, INC.,
 24 a Delaware corporation,
 COUNTRYWIDE CAPITAL
 25 MARKETS; COUNTRYWIDE
 SECURITIES CORPORATION; J.P.
 26 MORGAN SECURITIES INC.;

) Case No.: 2:10-CV-00302 MRP
 (MAN)

) MEMORANDUM OF POINTS
) AND AUTHORITIES IN
) SUPPORT OF MOTION BY
) UNITED METHODIST
) CHURCHES BENEFIT BOARD,
) INC. FOR APPOINTMENT OF
) LEAD PLAINTIFF AND
) APPROVAL OF LEAD
) PLAINTIFF'S SELECTION OF
) LEAD COUNSEL

) Date: May 3, 2010
) Time: 11:00 a.m.
) Courtroom: 12
) Judge: Hon. Mariana
) R. Pfaelzer

1 DEUTSCHE BANK SECURITIES)
 2 INC.; BEAR, STEARNS & CO.,)
 3 INC.; BANC OF AMERICA)
 4 SECURITIES LLC; UBS)
 5 SECURITIES, LLC; MORGAN)
 6 STANLEY & CO.)
 7 INCORPORATED; EDWARD D.)
 8 JONES & CO., L.P.; CITIGROUP)
 9 GLOBAL MARKETS INC.;)
 10 GOLDMAN, SACHS & CO.;)
 11 CREDIT SUISSE SECURITIES)
 12 (USA) LLC; GREENWICH)
 13 CAPITAL MARKETS, INC. A.K.A.)
 14 RBS GREENWICH CAPITAL;)
 15 BARCLAYS CAPITAL INC.; HSBC)
 16 SECURITIES (USA); BNP PARIBAS)
 17 SECURITIES CORP.; MERRILL)
 18 LYNCH, PIERCE, FENNER &)
 19 SMITH, INCORPORATED;)
 20 STANFORD L. KURLAND; DAVID)
 21 A. SPECTOR; ERIC P. SIERACKI;)
 22 N. JOSHUA ADLER; RANJIT)
 23 KRIPALANI; JENNIFER S.)
 24 SANDEFUR; DAVID A. SAMBOL,)
 25

26 Defendants.

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15 U.S.C. § 77z-1(a)(3)(B)(iii)(II)(aa)	7
15 U.S.C. § 77z-1(a)(3)(B)(v)	7

1 The United Methodist Churches Benefit Board, Inc. (“Benefit Board”)
 2 respectfully submits this memorandum of law in support of its motion for: (i)
 3 appointment of Lead Plaintiff pursuant to Section 27(a)(3)(B) of the Securities Act
 4 of 1933 (the “Securities Act”), 15 U.S.C. § 77z-1(a)(3)(B), as amended by the
 5 Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4;
 6 and (ii) approval of its selection of Kirby McInerney LLP as Lead Counsel.

7 **I. PRELIMINARY STATEMENT**

8 The claims in this case arise from violations of the securities laws by
 9 Countrywide Financial Corporation (“CFC”), various of CFC’s subsidiaries,
 10 certain of the subsidiaries’ officers and directors, and the underwriters
 11 (“Underwriters”)¹ of the mortgage-backed certificate securities (“Certificates”)
 12 issued by the CFC subsidiaries. The Certificates at issue in this case were sold
 13 using false and misleading information contained in registration statements that
 14 were filed with the SEC and in sales prospectuses that were given to purchasers
 15 and filed with the SEC. The false and misleading information related to the quality
 16 of the mortgages underlying the Certificates, the appraisal procedures used to value
 17 that collateral, and the criteria used to establish borrower eligibility for the
 18 underlying mortgages.

19 When mortgages underlying the Certificates eventually defaulted as
 20 borrowers were unable to pay mortgages, the securities were downgraded by
 21 ratings agencies, Moody’s, Fitch, and S&P. As a result, prices for the Certificates
 22 plummeted, causing substantial damage to the plaintiffs and members of the Class
 23 who had purchased them.

25 ¹ The underwriter defendants are: J.P. Morgan Securities Inc.; Deutsche Bank Securities
 26 Inc.; Bear, Stearns & Co., Inc.; Banc of America Securities LLC; UBS Securities, LLC; Morgan
 27 Stanley & Co. Incorporated; Edward D. Jones & Co., L.P.; Citigroup Global Markets Inc.;
 28 Goldman, Sachs & Co.; Credit Suisse Securities (USA) LLC; Greenwich Capital Markets, Inc.
 a.k.a. RBS Greenwich Capital; Barclays Capital Inc.; HSBC Securities (USA); BNP Paribas
 Securities Corp.; and Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

1 The Benefit Board purchased the Certificates pursuant to various respective
 2 offerings and the accompanying registration statements and prospectuses. By
 3 virtue of its substantial investment in the Certificates and the loss of approximately
 4 \$10.9 million it suffered as a result of Defendants' misconduct, the Benefit Board
 5 believes that it has the largest financial interest in the relief sought in these
 6 actions.² The Benefit Board is, therefore, presumptively the "most adequate
 7 plaintiff" as defined by the PSLRA and should be appointed Lead Plaintiff.

8 The Benefit Board satisfies the requirement of Rule 23 of the Federal Rules
 9 of Civil Procedure that a class representative be adequate and have claims typical
 10 of the other class members. The Benefit Board is willing and able to undertake the
 11 responsibilities necessary to ensure a vigorous prosecution of this class action.
 12 The Benefit Board is, moreover, a sophisticated institutional investor capable of
 13 supervising counsel in complex securities litigation. Accordingly, The Benefit
 14 Board respectfully submits that it should be appointed Lead Plaintiff.

15 **II. FACTUAL AND PROCEDURAL BACKGROUND**

16 Defendant CFC and its subsidiary Countrywide Home Loans (collectively
 17 "Countrywide") is the largest residential mortgage lender in the United States. A
 18 substantial number of the mortgages made by Countrywide from 2005 through
 19 2007 were pooled together and transferred to hundreds of "Issuing Trusts" created
 20 by Countrywide subsidiaries: CWALT, Inc.; CWABS, Inc.; CWMBBS, Inc.; and
 21 CWHEQ, Inc. CWALT issued Alternative Loan Trust Certificates; CWABS
 22 issued Asset-Backed Trust Certificates, CWMBBS issued Mortgage Pass-Through
 23 Trust Certificates, and CWHEQ issued Home Equity Loan Trust Certificates.

24 CWALT, CWABS, CWMBBS and CWHEQ issued the Certificates pursuant
 25

26 ² A copy of the Benefit Board's Certification is attached as Exhibit A to the Declaration
 27 of Beverly Tse ("Tse Decl."). This Certification sets forth the Benefit Board's transactions in the
 28 Certificates. A chart setting forth the Benefit Board's losses in the Certificates is attached as
 Exhibit B to the Tse declaration.

1 to 20 different registration statements (“Registration Statements”) filed with the
2 SEC. The Certificates were then sold to plaintiffs by Countrywide and the
3 Underwriters, pursuant to written prospectuses (“Prospectus Supplements”) that
4 were also filed with the SEC. The Certificates provided for plaintiffs to receive
5 monthly distributions of interest and principle on the mortgages held by the Issuing
6 Trusts. Plaintiffs received their income as borrowers repaid their mortgages. If
7 borrowers did not repay their mortgages, losses would carry through to plaintiffs
8 pursuant to Certificate terms.

9 The Registration Statements and Prospectus Supplements contained
10 materially false and misleading information, and omitted to include material
11 information in violation of Sections 11, 12(a)(2) and 15 of the Securities Act, 15
12 U.S.C. §§ 77k, 77l(a)(2) and 77o. Specifically, these documents misstated and
13 omitted information about the origination process used to obtain the mortgages in
14 the Issuing Trusts that were the underpinning for the Certificates. The Registration
15 Statements and Prospectus Supplements described underwriting and appraisal
16 standards that had not been followed by Countrywide when it sold the mortgages.
17 The appraisals of the collateral used to secure the Certificates overstated its value
18 and thereby exposed plaintiffs to losses in the event of foreclosure.

19 Countrywide provided this misinformation to Moody’s, Fitch, and S&P,
20 which used it to rate the Certificates in different categories, or “tranches,”
21 according to priorities of payment and exposure to default on the underlying
22 mortgages. The ratings, in turn, determined in part the price of the Certificates,
23 and were incorporated into the Prospectus Supplements for purposes of selling the
24 Certificates to plaintiffs and the Class. Based on the misrepresentations and
25 omissions about the quality of the underlying mortgages and other criteria
26 regarding the collateral held by the Issuing Trusts, all of the various tranches of the
27 Certificates were given investment grade ratings.

28 By mid-2007, the mortgages held by the Issuing Trusts were defaulting in

1 significant numbers, which led to foreclosures on the underlying real estate. These
 2 foreclosures revealed properties that were worth substantially less than the
 3 mortgages used to secure Countrywide's loans. As borrowers failed to make
 4 payments of principle and interest, plaintiffs who held the Certificates were entitled
 5 to less income. As a consequence, and due to Countrywide's failure to comply
 6 with underwriting and appraisal guidelines described in the Registration
 7 Statements and Prospectus Supplements, many of the Certificates were
 8 downgraded by Moody's, Fitch, and S&P, and all were very severely impacted.
 9 Threatened with bankruptcy, Countrywide was eventually acquired by Bank of
 10 America.

11 The instant class action was filed on January 14, 2010, and on February 1,
 12 2010, the first notice of the action was published on Business Wire (*see* Tse Decl.,
 13 Exhibit C). The notice alerted the Class to the pendency of this case and the
 14 deadline for seeking appointment as Lead Plaintiff. Consistent with the
 15 requirements of the PSLRA, the Benefit Board has timely filed this motion for
 16 appointment as Lead Plaintiff within 60 days from publication of the first notice
 17 of pendency.

18 **III. ARGUMENT**

19 **A. The Benefit Board Should Be Appointed Lead Plaintiff.**

20 The Benefit Board respectfully submits that it should be appointed Lead
 21 Plaintiff because it is the movant "most capable of adequately representing the
 22 interests of class members." 15 U.S.C. § 77z-1(a)(3)(B)(i). The PSLRA
 23 establishes a presumption that the "most adequate plaintiff" is the movant that "has
 24 the largest financial interest in the relief sought by the class" and which "otherwise
 25 satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15
 26 U.S.C. § 77z-1(a)(3)(B)(iii)(I). *See also In re Cavanaugh*, 306 F.3d 726, 730 (9th
 27 Cir. 2002); *Cunha v. Hansen Natural Corp.*, No. 08 Civ. 01249, 2009 WL
 28 2029797, at *1 (C.D. Cal. July 13, 2009); *Tanne v. Autobyte, Inc.*, 226 F.R.D. 659,

1 664-65 (C.D. Cal. 2005).

2 **1. The Benefit Board Believes That It Has The Largest**
 3 **Financial Interest In The Relief Sought By The Class.**

4 The Benefit Board is presumptively the most adequate plaintiff for the
 5 reasons set forth below and because it believes that it has the largest financial
 6 interest in the relief sought by the Class. As a result of the wrongdoing alleged in
 7 the complaint, and the consequential decline in value of its Certificates, the Benefit
 8 Board has suffered approximately \$10.9 million in losses. *See Tanne*, 226 F.R.D.
 9 at 666 (comparing losses of competing lead plaintiff movants). The Benefit Board
 10 purchased a total of 58,469,392 Certificates, and (taking into account sales) had net
 11 holdings of 31,358,667 Certificates. The net funds expended by the Benefit Board
 12 on Certificates was \$31,388,415. Given the magnitude of its losses, the Benefit
 13 Board believes that it has the largest financial interest of any proposed Lead
 14 Plaintiff.

15 **2. The Benefit Board Otherwise Satisfies The Requirements**
 16 **of Rule 23.**

17 The Benefit Board should be appointed Lead Plaintiff because it also
 18 satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. On
 19 a motion to serve as Lead Plaintiff, the movant need only make “a preliminary
 20 showing of typicality and adequacy.” *Ferrari v. Gisch*, 225 F.R.D. 599, 606 (C.D.
 21 Cal. 2004) (citing *Erikson v. Cornerstone Propane Partners LP*, No. 03-2522,
 22 2003 WL 22232387, at *3 (N.D. Cal. Sept. 15, 2003). *See also In re Cavanaugh*,
 23 306 F.3d at 730; *Tanne*, 226 F.R.D. at 666 (“‘A wide ranging analysis is not
 24 appropriate’ to determine whether [the movant] has made a prima facie showing
 25 that he satisfies the requirements of Rule 23, and ‘should be left for consideration
 26 on a motion for class certification’”) (quoting *Fischler v. AMSouth*
 27 *Bancorporation.*, No. 96 civ. 1567, 1997 WL 118429, at *2 (M.D. Fla. Feb. 6,
 1997)). The Benefit Board satisfies both requirements in this case.

28 The Benefit Board’s claims are typical of the claims of other Class members.

1 The typicality requirement is satisfied when the proposed Lead Plaintiff has (i)
2 suffered the same injuries as class members; (ii) as a result of the same course of
3 conduct; and (iii) its claims are based on the same legal issues. *See Armour v.*
4 *Network Assocs., Inc.*, 171 F. Supp. 2d 1044, 1052 (N.D. Cal. 2001). The Benefit
5 Board's claims and injuries in this action arise from the same course of misconduct
6 by defendants as those of other Class members – *i.e.*, the inflated prices paid for
7 the Certificates as a result of false statements and omissions regarding the quality
8 of the underlying mortgages. *See Tanne*, 226 F.R.D. at 667. The legal issues are
9 likewise the same; the case only alleges innocent and/or negligent conduct on the
10 part of Countrywide and its subsidiaries, the individuals, and the Underwriters.

11 The Benefit Board likewise satisfies the adequacy requirement of Rule 23.
12 “Representation is ‘adequate’ when the representative’s interests are not
13 antagonistic to the interests of absent class members, it is unlikely that the action
14 is collusive, and counsel for the class is qualified and competent.” *Ruland v.*
15 *InfoSonics Corp.*, No. 06-cv-1231, 2006 WL 3746716, at *6 (S.D. Cal. Oct. 23,
16 2006). The Benefit Board is adequate to represent the Class because its interests
17 are perfectly aligned with those of the other Class members and are not
18 antagonistic in any way. *See Tanne*, 226 F.R.D. at 667. As an investor who
19 purchased Certificates at inflated prices and suffered substantial losses when the
20 truth was revealed, the Benefit Board has an identity of interest with its fellow
21 Class members. There are no facts suggesting that any actual or potential conflict
22 of interest or other antagonism exists between the Benefit Board and other Class
23 members.

24 As a large and sophisticated institution with \$15.7 billion in assets under
25 management, the Benefit Board is the type of investor Congress hoped would lead
26 class actions when it enacted the PSLRA. *See, e.g., In re SiRF Tech. Holdings,*
27 *Inc. Sec. Litig.*, No. C 08-0856, 2008 WL 2220601, at *3 (N.D. Cal. May 27, 2008)
28 (“by enacting the PSLRA, Congress sought to increase the participation of

1 institutional investors in securities class actions”); *Osher v. Guess?, Inc.*, No. 01-
 2 cv-871, 2001 WL 861694, at *3 (C.D. Cal. Apr. 26, 2001) (“large institutional
 3 investor preferred by the Reform Act”).

4 The Benefit Board’s very significant interest in the outcome of the case
 5 ensures vigorous advocacy. *See, e.g., Ruland*, 2006 WL 3746716, at *6 (finding
 6 adequate a proposed Lead Plaintiff that “has [adequate] incentive to prosecute this
 7 action vigorously and states that he is willing to serve as a representative on behalf
 8 of the class”). The Benefit Board has submitted a Certification affirming its
 9 commitment to the steps necessary for effective prosecution of this complex Class
 10 action. *See Tse Decl.*, Exhibit A. Through that Certification, the Benefit Board
 11 accepts the fiduciary obligations it will assume if appointed Lead Plaintiff in this
 12 action. *See Tanne*, 226 F.R.D. at 668, 671.

13 **B. The Court Should Approve Lead Plaintiff’s Selection of Kirby**
 14 **McInerney LLP as Lead Counsel**

15 The PSLRA vests authority in the Lead Plaintiff to select and retain counsel,
 16 subject only to approval of the Court. *See* 15 U.S.C. § 77z-1(a)(3)(B)(v). Thus,
 17 the Court should not disturb the Lead Plaintiff’s choice of counsel unless necessary
 18 to “adequately protect the interest of the class.” 15 U.S.C. § 77z-
 19 1(a)(3)(B)(iii)(II)(aa). *See also In re Cavanaugh*, 306 F.3d at 733. In the present
 20 case, movant has retained Kirby McInerney LLP to pursue this litigation on its
 21 behalf, and will seek to use the firm as plaintiff’s Lead Counsel, and the law firm
 22 of The Wagner Firm as Liaison Counsel, in the event it is appointed Lead Plaintiff.
 23 Kirby McInerney LLP possesses extensive experience in the area of securities
 24 litigation and has successfully prosecuted numerous securities class actions on
 25 behalf of injured investors, as reflected by the firm resumé attached to the Tse
 26 Declaration as Exhibit D. Thus, the Court may be assured that, by granting
 27 movant’s motion, the Class will receive high quality legal representation.
 28

1 **IV. CONCLUSION**

2 For all of the foregoing reasons, the Benefit Board respectfully requests that
 3 the Court: (i) appoint the Benefit Board as Lead Plaintiff pursuant to the PSLRA;
 4 (ii) approve its selection of Kirby McInerney LLP as Lead Counsel; and (iii) grant
 5 such other and further relief as the Court may deem just and proper.

6 Dated: April 2, 2010

7
8 Respectfully submitted,

9
10 THE WAGNER FIRM

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Lead Counsel for the Proposed Lead Plaintiff

**PROOF OF SERVICE VIA ELECTRONIC POSTING PURSUANT TO
CENTRAL DISTRICT OF CALIFORNIA LOCAL RULES
AND ECF GENERAL ORDER NO. 08-02**

I, the undersigned, say:

I am a citizen of the United States and am employed in the office of a member of the Bar of this Court. I am over the age of 18 and not a party to the within action. My business address is 1801 Avenue of the Stars, Suite 311, Los Angeles, California 90067.

On April 2, 2010, I caused to be served the following documents:

- 1. NOTICE OF MOTION AND MOTION BY UNITED METHODIST CHURCHES BENEFIT BOARD, INC. FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL**
- 2. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY UNITED METHODIST CHURCHES BENEFIT BOARD, INC. FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL**
- 3. DECLARATION OF BEVERLY TSE IN SUPPORT OF MOTION BY UNITED METHODIST CHURCHES BENEFIT BOARD, INC. FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL**
- 4. [PROPOSED] ORDER FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION**

By posting these documents to the ECF Website of the United States District Court for the Central District of California, for receipt electronically by the following parties:

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11 There are no non-ECF registered parties in this action.

12 I certify under penalty of perjury under the laws of the United States of
13 America that the foregoing is true and correct. Executed on April 2, 2010, at Los
14 Angeles, California.

15 *s/ Avi Wagner*
Avi Wagner